

REMARKS

At the outset, it is respectfully requested that the Examiner reconsider his position with respect to the sufficiency of the Affidavit which unequivocally states that the applicants are the inventors of the subject matter described and claimed in their application and that the publications in question are publications of the subject matter claimed in the Complete Application and were published by the assignee of the Complete Application.

CONSIDERATION OF AFFIDAVIT

The Examiner has referred to M.P.E.P. Section 716.10 which requires that to rebut a rejection under 35 U.S.C. §102(a), the inventors named must provide a satisfactory showing by way of Affidavit under 37 C.F.R. §1.132 that the inventorship of the application is correct. That section of the Manual relies upon **In re Katz**, 687 F.2d 450, 455, 215 USPQ 14, 18 (CCPA 1982). The Examiner concludes that there is ambiguity based on the absence of anything in the publications with respect to authorship or inventorship. On this point, in **In re Katz** the ambiguity created by the printed publication was that the publication listed several authors in addition to the inventor; and the Examiner took the position that "Disclaiming affidavits or declarations by the other authors are required to support applicant's position that he is, in fact, the sole inventor of the subject matter described in the

article and claimed herein." The Court of Customs and Patent Appeals reversed, stating that it was sufficient for the inventor alone to aver in his declaration that "he is the sole inventor of the subject matter described and claimed in his application and also that disclosed in the publication" In reaching this conclusion, the Court distinguished authorship of the publication from inventorship of the subject matter claimed in the application.

In the instant application, the publications in question do not recite the names of the authors or whether there were more authors than inventors. If anything, even assuming that there were other authors of the publication, it would not be necessary under the holding in *In re Katz* to submit additional declarations from the other authors disclaiming inventorship.

The foregoing is further reinforced by M.P.E.P. Section 716.10 (Column 2 at page 700-269 of Revision dated 2 May, 2004):

"An uncontradicted 'unequivocal statement' from the applicant regarding the subject matter disclosed in an article, patent, or published application will be accepted as establishing inventorship. *In re DeBaun*, 687 F.2d 459, 463, 214 USPQ 933, 936 (CCPA 1982). However, a statement by the applicants regarding their inventorship in view of an article, patent, or published application may not be sufficient where there is evidence to the contrary. *Ex parte Kroger*, 218 USPQ 370 (Bd. App. 1982)"

The M.P.E.P. is therefore consistent with the cited cases in requiring something further than a Declaration of Affidavit of the inventor(s) only where there is evidence to the contrary.

It is therefore requested that the Examiner reconsider his position with respect to the sufficiency of the Affidavit.

VAGUE AND INDEFINITE

Claims 1, 10-12 and all claims dependent therefrom have been objected to as confusing and redundant in reciting a succession of steps, namely, "determining (the presence of) antigens and antibodies", "remote serological cross-matching", and "determination (testing the) of compatibility" The Examiner then concludes by saying that it is not clear whether such language was intended to mean that the steps are to be performed multiple times. In response, there are three separate or distinct steps involved, although they follow in close sequence to one another. Thus, the step of identifying which antigens and antibodies are present or absent is done prior to the remote serological cross-matching step in which the segment and patient specimen are mixed together which must be done in order to determine their compatibility with one another. However, the actual determination of compatibility is the next step in which, for example, as described on page 13, line 27 to page 14, line 7

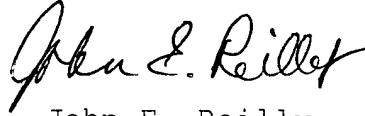
and in Figure 4 is done after the information is stored in the database.

Although it is not necessary to the description of steps involved, it is believed helpful to an understanding of claim 1 to remove the phrase "storing said information in said database thereof"; and in the interest of consistency with the preceding steps in claim 1, the term "segment" has been inserted where appropriate throughout the steps in question.

Referring to claims 10-12, the Examiner's attention is directed to page 26, beginning at line 3, which refers to the ability to determine compatibility of the blood products and specimens as a preliminary step for cross-matching. However, in the interest of consistency with claim 1, claim 11 has been amended to recite "prior to said cross-matching", and claim 12 has been amended to recite "after said cross-matching".

If any issues remain to be resolved, it is requested that the Examiner contact attorney for applicants at the telephone number listed below.

Respectfully submitted,



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CERTIFICATE UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing Amendment is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, this 15th day of September, 2004.

